

#: 535

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SF-J. Weir

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JAMES BENBOW,

Plaintiff,

-against- Civ. No.: 17-CV-6457 (EK) (LB)

CITY OF NEW YORK; POLICE OFFICER BRIAN W.
FEELY; POLICE OFFICER MATTHEW J. ROSIELLO;
POLICE OFFICER KENNETH L. ANDERSON; SERGEANT
WILLIAM A. DAIB; POLICE OFFICER SHANIEL J.
MITCHELL; and POLICE OFFICER STEPHEN J.
MINUCCI,

Defendants.
----- x

VIDEOCONFERENCE VIA ZOOM
Conducted by:
LEX REPORTING SERVICE, INC.
160 Broadway
New York, New York

December 7, 2020
2:31 p.m.

DEPOSITION of POLICE OFFICER BRIAN

WILLIAM FEELEY, named herein as **POLICE OFFICER**
BRIAN W. FEELY, a Defendant in the
above-entitled action, held remotely via Zoom
videoconference, pursuant to Order, taken
before Tania C. Pedrosa, a shorthand reporter
and Notary Public within and for the State of
New York.

LEX #161124

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A p p e a r a n c e s :

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FILE No.: 2017-066702

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED
by and between the attorneys for the
respective parties herein, that filing,
sealing and certification be and the
same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the
form of the question shall be reserved
to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be signed
and sworn to before any officer
authorized to administer an oath, with
the same force and effect as if signed
and sworn to before the Court.

THE REPORTER: This deposition is being conducted via Zoom videoconferencing. All parties present are appearing remotely and have confirmed that they can hear and see through the video without any technical issues.

Before I swear in the witness, I will ask counsel to stipulate on the record that due to the national pandemic, the court reporter may swear in the deponent even though they are not in the physical presence of the deponent, and that there is no objection to that at this time, nor will there be an objection to it at a future date.

Counsel, do you agree?

MR. WEINER: Agreed.

THE REPORTER: Aymen.

MR. ABOUSHI: Agreed.

THE REPORTER: And, Counsel,

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can you represent that to the
best of your knowledge and
belief, the witness appearing
today via videoconference is
indeed Police Officer Brian
Feeley?

MR. WEINER: Yes.

B R I A N W I L L I A M F E E L E Y, the
witness herein via videoconference,
having first been duly sworn by a
Notary Public of the State of New York,
was examined and testified as follows:

EXAMINATION BY

MR. ABOUSHI:

Q State your name for the record,
please.

A Brian William Feeley.

Q State your address for the
record, please.

MR. WEINER: Just your work
address is good.

A 127 Utica Avenue, Brooklyn,
New York 11213.

Q Good afternoon, Officer Feeley.

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B. W. Feeley

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when you say that he pointed a weapon at you?

MR. WEINER: Objection.

A Running away?

Q Yeah.

A From -- from who?

Q Was he running at all -- well,
let me ask you this -- let me back up.

You testified that Mr. Benbow
pointed a gun at you and you fired at him,
correct?

A Yes. He was raising it, yes.

Q Okay. And how far away from you
was Mr. Benbow?

A I want to say 10 to 15 feet
maybe.

Q Okay. And from 10 to 15 feet
away, he points the gun directly at you,
correct?

MR. WEINER: Go ahead.

Sorry. I withdrew -- no
objection.

A He was raising the gun towards
me, in my direction.

Q Okay. Was he facing you?

B. W. Feeley

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don't --

Q Okay. So you're sure they were on the sidewalk before you fired and shot Mr. Benbow, correct?

A Yes, that's what I remember.

Q Okay. And when you first observed Mr. Benbow, he was actually running down the sidewalk, correct?

A Yes.

Q Okay. And then he cut in between two cars, correct?

A Yes.

Q Okay. And while he was in between two cars, you testified earlier that you were right there in front of him, correct?

A Yes. I was on the street.

Q And that he raised the gun in your direction as you were standing in front of him, correct?

A Yes.

Q And you shot him at that point, correct?

A Yes.

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Q Okay. You're standing by your car. You were in the street at that time, correct?

A I'm sorry. Say that again.

Q When you got out of your car, you were in the street?

A Yes.

Q And when you shot Mr. Benbow, you were in the street as well, correct?

A Yes.

Q Okay. And so then there's the shooting of Mr. Benbow, correct?

A Yes.

Q And then you see Sergeant Diab again after the shooting, correct?

A Yes.

Q And did you say anything to Sergeant Diab?

A I don't remember.

Q Okay. Did he say anything to you?

A I don't remember.

Q Did any other officers fire their weapons that night?

B. W. Feeley

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A Rosiello.

Q Okay. Did you see him fire his
weapon?

A No.

Q Did you talk to him about why he
fired his weapon?

A No.

Q Do you know how many shots he
fired?

A I believe one.

Q Did you speak to Officer Anderson
after you shot Mr. Benbow?

A No -- well -- yeah.

Q No, you didn't speak with Officer
Anderson?

A Not about the incident.

Q Okay. So after you shoot
Mr. Benbow, when's the next time that --
strike that.

How soon after shooting
Mr. Benbow did you see Sergeant Diab?

A I don't know.

Q Okay. How about Officer Minucci?

A Seconds.

B. W. Feeley

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Q Okay. How about Officer Anderson?

A I don't remember.

Q When Mr. Benbow was running down the sidewalk and then he ran in between the two cars, was anyone chasing him?

A No. I just heard Rosiello and Anderson say "drop the gun" and stuff like that.

Q Okay. Did Anderson fire his weapon?

A No.

Q Okay. After you shot Mr. Benbow, did you say anything to him?

A No.

Q Did you say anything before you shot him?

A I said, "Police. Drop the gun."

Q Okay. So when did you say "Police. Drop the gun?"

A When he was coming in between the two cars.

Q Okay. And you said this happened quickly?

B. W. Feeley

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A Yes.

Q Okay. So you had time to say
"Police. Drop your gun" before you shot him?

A Yes.

Q Is that your testimony?

A Yes.

Q Okay. And did anyone say
anything else?

A I just heard Rosiello and
Anderson screaming, like, "Police. Drop the
gun. Drop the gun. Police," stuff like
that.

Q How many times did you fire your
weapon that night?

A Three.

Q Did Mr. Benbow say anything to
you before you shot him?

A I don't -- no.

Q Did he say anything to you after
you shot him?

A Not that I remember.

Q When you shot at Mr. Benbow, did
you aim at center mass?

A Yes.

1 B. W. Feeley 117

2 You were asked to make notations
3 on that chart that you reviewed --

4 A I don't --

5 Q -- with your attorney --

6 A I don't remember it, like, at --

7 Q Let me finish -- just let me
8 finish before you say you don't remember.

9 How can you remember if you don't
10 know what I'm asking you?

11 A Well, I don't remember for the
12 first time you asked that question. Sorry.

13 Q Okay. So let me ask you this --
14 and if you don't remember, then tell me you
15 don't remember.

16 You were given a diagram by the
17 NYPD, correct?

18 A Yes, I remember the -- getting
19 the document, yeah.

20 Q Okay. And the diagram was of the
21 scene of the shooting, correct?

22 A Yes.

23 Q Okay. And you were given that
24 document at your GO-15, correct?

25 A Yes.

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Q Okay. And a GO-15 is the interview you had with your superiors regarding the shooting, correct?

A Yes.

Q And on that diagram that you were handed by your superiors, you were asked to put an "F" where you were standing, correct?

A That, I don't remember.

Q Okay. You were also asked to put an "A" and an "R" where Anderson and Rosiello were standing, correct?

A Like I said, the document would refresh -- refresh my memory if I could see it. But I do remember putting, like I said, letters or whatever in certain spots. I don't remember what -- who was supposed to be who. Like I said, if I could see the document --

Q Well, I'm just asking you. Does "F" stand for Feeley on your document?

MR. WEINER: Objection. He already answered the question.

Go ahead and answer again.

A I -- I don't remember --

1 B. W. Feeley 119

2 MR. ABOUSHI: It's not
3 funny. None of this is funny.

4 A No.

5 MR. WEINER: No, it's not.

6 A Not at all.

7 MR. WEINER: It's not at
8 all.

9 MR. ABOUSHI: You're
10 laughing and the witness is
11 laughing. It's just not funny.

12 Q Do you remember putting an "F"
13 for Feeley on that diagram?

14 A I don't know if the "F" stands
15 for Feeley right now. I don't remember.

16 Q Okay. Just hold on a second.
17 Officer Feeley, what's the last
18 three numbers of your tax ID?

19 A My last -- which one? I didn't
20 hear you.

21 Q The last three numbers of your
22 tax ID?

23 A 550.

24 Q And the first three are 944,
25 correct?

1 B. W. Feeley 120

2 A Yes.

3 Q Okay. And your shield is 2768?

4 A Yes.

5 Q Okay.

6 (Screen share enabled.)

7 MR. ABOUSHI: Can everyone
8 see this document?

9 THE REPORTER: Yes.

10 THE WITNESS: Yeah.

11 MR. ABOUSHI: Okay. For the
12 record, this document is
13 Bates-stamped 161. It's been
14 produced by the City of New York
15 and it's initialed.

16 Q Officer Feeley, do you see this
17 document?

18 A Yes.

19 Q This is the sketch that we're
20 talking about that you made notations on,
21 correct?

22 A Yes.

23 Q Okay. And that's your tax ID
24 number to the left, correct?

25 A Yes.

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Q 944550, do you see that?

A Yes.

Q Okay. And that's your shield number, correct?

A Yes.

Q Okay. And that's your signature, correct?

A Yes.

Q And this is the diagram that you filled out during your GO-15 marking where you and everyone else were standing on the night of the incident, correct?

MR. WEINER: Objection.

A Yes.

MR. WEINER: Go ahead.

Q Okay. And there's an "F" towards the top of the number -- a car that looks like number "6."

Do you see that?

A Yes.

Q There's a car in the middle to the left that has a -- it looks like a number "6" in it, right?

A Yes.

1 B. W. Feeley 122

2 Q And in front of that car is a
3 "P3" that you wrote, correct?

4 A Yes.

5 Q Okay. And right next to that car
6 where it says "F" -- right?

7 A Yeah.

8 Q -- that's where you were
9 standing, correct?

10 A Yes.

11 Q Okay. According to your sketch
12 that you wrote on, correct?

13 A Yes.

14 Q Okay. And the "A" and "R" you
15 wrote for Anderson and Rosiello, correct?

16 A Yes.

17 Q Do you see it on the screen where
18 you notated that?

19 A Yeah, I see -- I see the "A" and
20 the "R."

21 Q And that's on the south sidewalk,
22 correct?

23 A Is there a compass on the map? I
24 don't -- I don't see the --

25 Q Okay. Well, essentially --

B. W. Feeley

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A It's on the sidewalk.

Q You're right. You're right.

You're right. I'm not going to say north or south because there's no compass and it might throw us all off down the road.

But "A" and "R" are on the sidewalk, correct?

A Yes.

Q Okay. And "A" and "R" are behind "P3," correct?

MR. WEINER: Behind?

Objection.

A Yes, they would have been behind, yes.

Q Okay. And you're in front of "P3," correct?

A Yes.

Q And "P2" is to the right of "P3," right?

A P -- you said "P3" --

Q "P2." "P2."

A "P2" is --

Q To the right of "P3," correct?

A On mine is the left. P -- I'm

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1
2 sorry. "P2" --

3 Q It's okay. It's okay. Let me
4 not confuse you. We don't --

5 A To the left of --

6 Q -- have north, south, east, and
7 west.

8 A To the left of "P2" is "P3."

9 Q Okay.

10 A That's how I --

11 Q And further -- and to the left --
12 okay. That's fine.

13 A Maybe I just didn't hear you the
14 way it was --

15 Q No. That -- that's fine. That's
16 fine.

17 And this is the sketch that you
18 made notations on at your GO-15, correct?

19 A Yes.

20 Q Okay. And that "F" is you,
21 correct, for Feeley?

22 A Yes.

23 (Screen share disabled.)

24 THE REPORTER: Are you
25 marking that or that was marked

1 B. W. Feeley 125

2 already?

3 MR. ABOUSHI: It wasn't
4 marked. But, for the record,
5 it's Document 161. I think I
6 made the record on it. I don't
7 know if I need to mark it unless
8 Mr. Weiner feels otherwise.

9 MR. WEINER: I do. I think
10 you do need to just so it comes
11 as a set with the whole
12 deposition. I think it should be
13 marked plaintiff's -- whatever
14 exhibit you want to call it just
15 so we have a little bit of, you
16 know, certainty.

17 MR. ABOUSHI: I'll cross
18 that bridge at the end of the
19 dep.

20 But now is a good time to
21 take a few-minute break.

22 MR. WEINER: How much do you
23 have left?

24 MR. ABOUSHI: I'm not really
25 sure. I want to go through the

1 B. W. Feeley 126

2 outline.

3 MR. WEINER: Fair enough.

4 MR. ABOUSHI: It's 4:21 now.

5 Let's reconvene at 4:30, please.

6 MR. WEINER: Okay.

7 THE WITNESS: All right.

8 MR. WEINER: All right.

9 Officer, see you at 4:30.

10 THE WITNESS: All right.

11 (Whereupon, a short recess
12 was taken.)

13 BY MR. ABOUSHI:

14 Q Now, after the shooting you
15 attended what's called a GO-15; is that
16 correct?

17 A Yes, sir.

18 Q Okay. What is a GO-15?

19 A I don't -- it's, like, a -- like
20 an investigation I guess I want to say.

21 Q Okay. Who conducts a GO-15?

22 A Usually a lieutenant or -- or --
23 usually a lieutenant from what I
24 understand --

25 Q Okay.

1 B. W. Feeley

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2 MR. WEINER: What's the
3 objection? What's the basis?

4 MR. ABOUSHI: The reason why
5 he fired his gun three times?

6 MR. WEINER: Why did he --
7 why three as opposed to -- as
8 opposed to another number?

9 MR. ABOUSHI: Well, that's a
10 better question.

11 MR. WEINER: You're right,
12 it is.

13 Q Okay. Why did you -- why did you
14 -- why did you fire three -- three times as
15 opposed to another number of times?

16 MR. ABOUSHI: I believe it's
17 asked and answered.

18 A I fired and then the threat was
19 no longer there, like he -- you know, he fell
20 and the gun came out of his hands so that was
21 it.

22 Q Okay. So Mr. Benbow fell after
23 your third shot?

24 MR. ABOUSHI: Objection.

25 A I don't remember exactly, you

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MR. WEINER: I'll note --

I'll note -- I'll note the
blatant speaking objection there.

Q So you testified that you shot
the plaintiff when he was running in your
direction in the street, right?

A Coming between the cars.

Q Yes, okay. And before you shot,
you said the gun -- his gun was raised in
your direction, right?

A Yes.

Q Okay. And before you shot, you
said that either Officers Rosiello -- Officer
Rosiello or Officer Anderson said something
to the effect of "Police. Drop the gun,"
right?

A Yes.

Q Okay. Do you remember if you saw
the gun raised before or after you heard
either Officer Rosiello or Officer Anderson
say "Police. Drop the gun?"

A This would be after.

Q So first you heard Officer
Rosiello or Officer Anderson and then you saw

B. W. Feeley

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the gun raised in your direction --

A Yes.

Q -- is that correct?

Okay. All right. And, now, when you fired -- this might have been asked and I'm sorry if it was.

What was the distance between you and Mr. Benbow when you -- when you first fired?

A I -- I think he did ask it earlier but I -- I want to say I said approximately 10 to 15 feet.

Q Okay. 10, 15 feet. So it could be a little -- a little less, a little more than 10 to 15?

A Yeah.

MR. ABOUSHI: Objection.

Q Okay. So that's an approximation by you --

A Yes.

Q -- 10 to 15 feet?

Okay. And, by the way, what was -- were all three of your shots fired in rapid succession or did you pause between any

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B. W. Feeley

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of the shots?

A I don't -- I want to say it was kind of within -- all together, like it was, like, kind of one motion, kind of...

Q Okay.

MR. ABOUSHI: When you say you want to say, do you remember or are you just guessing?

THE WITNESS: Yes. It was -- it was -- it was all -- it was like -- it wasn't, like, time went on. It was, you know, like -- I feel like it was, you know, one and then one, two, like all kind of...

Q Okay. So if you could estimate, how many seconds were between the -- transpired between the first time you shot and the last time you shot?

A Oh, it was very quick.

Q Okay.

A Maybe 20 seconds, 30 -- not -- not long.

Q No. The first -- I'm sorry. The

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him questions.

MR. WEINER: Okay.

MR. ABOUSHI: You can't do this. And I'm not going to sit by and let you continuously --

Q So would it be fair to --

MR. ABOUSHI: -- lead him and put words in his mouth.

Q So it would be fair to say you shot three shots, one after the other?

A Yes.

Q Okay. All right. You said that Mr. Benbow was raising -- raised the gun in your direction. Okay.

Does that mean that the gun in his hand was moving from low to high?

A Yeah.

MR. ABOUSHI: Objection. The witness testified that he can't testify about anything other than it was going in his direction.

A I said he was --

MR. ABOUSHI: I'm going to